



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED] s  
[REDACTED]  
[REDACTED]

DECISION

FTI/150337

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 28, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 22, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both a notice of tax intercept tax issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner was sent multiple Notifications of FS Overissuance:
  - 9/18/12, an overpayment of \$8237.00 for the period from 6/1/10 to 5/31/11;

- 9/18/12, an overissuance of \$3140.00 for the period from 6/1/11 to 10/31/11;
- 9/21/12, an overpayment of \$3843.00 for the period from 9/21/09 to 5/31/10 and
- 9/21/12, an overpayment \$4077.00 for the period of 11/1/11 to 9/30/12.

These total \$18,904.00. All were sent to Petitioner at the above address of [REDACTED] Ave., [REDACTED]. All contain appeal instructions and note an appeal deadline of 90 days. All were for the same reason – the client error of failing to report unearned income

3. A repayment agreement dated October 2, 2012 was sent to Petitioner at the [REDACTED] address.
4. Dunning notices dated November 2, 2012, December 4, 2012 and January 3, 2013 were sent to Petitioner at the [REDACTED] address.
5. A State of Wisconsin tax intercept notice, dated February 15, 2013, was sent to Petitioner at the [REDACTED] address and informed Petitioner that his tax refunds were subject to intercept to repay an \$18,904.00 overpayment of FoodShare benefits. It contains appeal instructions and the appeal deadline was noted to be 30 days from the date of the notice.
6. This appeal was filed on June 28, 2013.

### DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, *Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR, §273.15(g).*

The question here is whether or not Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept.

Petitioner maintains this appeal should be determined to be timely for both the underlying overpayment and for the tax intercept because he was out of Wisconsin for a time, because his daughter was at the address above and received the notices but threw them away and because he and his wife were legally separated in July of 2011 so he was living elsewhere. Nonetheless all of the notices, including this notice for this hearing were sent to Petitioner at the above address. He received the notice for hearing. While CCAP records support Petitioner's claim that he was legally separated they also indicate that the divorce was dismissed in June of 2012 - prior to all of the notices involved here. I am concluding that the notices of the overpayments alleged here were sent to the correct address for Petitioner and that he did not timely appeal.

The analysis for the tax intercept is the same. This appeal was filed well after the 30 day time limit and I conclude that the appeal is untimely as to what the tax intercept notice.

### **CONCLUSIONS OF LAW**

1. That Petitioner's June 28, 2013 appeal is untimely with respect to the September 18 and 21, 2012 notices of FoodShare overissuance.
2. That Petitioner's June 28, 2013 appeal is untimely with respect to the February 15, 2013 tax intercept notice.
3. That the Department may certify the sum of \$18,904.00 as an amount due and may proceed with the action to intercept the Petitioner's income tax refund.

**THEREFORE, it is**

**ORDERED**

That this matter is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

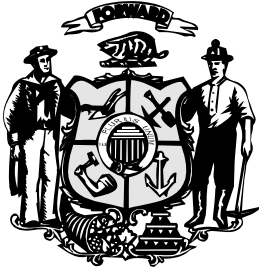
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of August, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 23, 2013.

Racine County Department of Human Services  
Public Assistance Collection Unit